

HAROLD E. KURTZ, JR.

IBLA 81-296

Decided November 10, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM 25028 (TX).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior lacks authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, where payment is not made within 20 days after the due date.

APPEARANCES: Harold E. Kurtz, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Harold E. Kurtz, Jr., appeals from the December 11, 1980, decision of the New Mexico State Office, Bureau of Land Management (BLM), which denied appellant's petition for reinstatement of oil and gas lease NM 25028 (TX). The lease terminated by operation of law for failure to pay the rental on or before October 1, 1980. BLM did not receive the rental due until October 30, 1980.

The lease was originally issued for a 10-year period effective October 1, 1975. On November 17, 1980, BLM sent appellant a notice of termination citing 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c).

In his petition for reinstatement, appellant asserted that his failure to pay the rental timely was justifiable because he was involved in two automobile accidents in July and August 1980, and his father, for whom he was responsible, was in the intensive care unit of the hospital from September 21 through September 27, 1980. BLM denied

the petition because appellant had failed to submit his rental payment within the 20-day period prescribed by 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c).

On appeal, appellant states that BLM's decision is economically adverse to him; that his offer was drawn in February 1975, but not issued until October 1975; that a BLM decision in 1975 reduced the acreage of the lease and omitted "Jr." from his name; that he is attempting to make the lease productive.

[1] The requirements for reinstatement are set forth in 30 U.S.C. § 188(c) (1976), which provides in part:

Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if * * *. [Emphasis added.]

The implementing regulation, 43 CFR 3108.2-1(c), states:

(c) Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *. [Emphasis added.]

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior is empowered to reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days of the anniversary date and where such failure to pay timely is either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Appellant's rental was due on October 1, 1980, and was not received until October 30, 1980, thus reinstatement of the lease is not authorized because the late rental was not received by BLM within the 20-day period specified in statute and regulation. Despite the hardship set forth by appellant, it is beyond the jurisdiction of the Department to reinstate the lease. Frank Bursua, 50 IBLA 259 (1980); Beatrice G. Wood, 42 IBLA 148 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

